IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14746 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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JITENDRAKUMAR KATILAL GANDHI - Petitioner(s)
Versus
DISTRICT MAGISTRATE & 3 - Respondent(s)

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Appearance :
MR PRAVIN GONDALIYA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
M IA SHAIKH for Respondent(s) : 3,
GOVERNMENT PLEADER for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 15/09/2005

ORAL JUDGMENT

1. The order of detention dated 08.08.2005 passed by the District Magistrate, Surendranagar District, in exercise of powers under Subsection (2) of Section 3 of the Gujarat Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short 'the Act') detaining the detenue with a view to prevent him from indulging into detrimental activities in maintenance of supply of Essential Commodities of wheat which was required to be distributed to the card holders holding the cards of fair price shops. Alongwith the order of detention the grounds were supplied to the detenue wherein it is stated that wheat is an essential commodities under the provisions of

the Act and to maintain essential supply of the same through fair price shop is the responsibility of the license holder of the fair price shops. It also refers to several conditions of license issued to the fair price shops owner, according to it the holder of license for fair price shop has to perform his activities as laid down in various conditions contained therein. One of the main conditions is to maintain the price fixed by the authority and the essential commodities are to be sold to ration card holders only and not to indulge in any prejudicial activities which might affect the supply of the essential commodities. It also refers to the procedure prescribed for selling such commodities after issuance of bills and also to maintain stock register of such commodities.

With the above backdrops on the facts, it is stated that about 108 bags of the wheat

weighing about 5400 kg to the tune of Rs.34,560/- were seized by the police inspector which, according to the authority remained unaccounted, unregistered and no reasonable explanation was rendered by the detenue. After the seizure performed on 8th June, 2005, 108 bags containing wheat were kept in the godown of the Civil Supply Department at Surendranagar and handed over to the District Supply Officer, Surendranagar.

That pursuant to the seizure, the statement of the detenue was recorded and it was submitted by the detenue that the said wheat, was purchased by the detenue from six different persons and it was submitted that the said quantity of wheat has nothing to do with the wheat to be supplied to the ration card holders. Thus, the concerned authority found that the activities of trading into wheat, a commodity defined under the essential commodities act, was

found to have been illegally transported by the detenue. It also states that the authority concerned has seized the relevant records i.e. account books, bill books of five different fair price shop owners who were named by the detenue from whom he had purchased wheat and particuarly for a period from April, 2005 to June, 2005 i.e. for a period of 3 months and also recorded the statement of ration card holders and it was found that the statement given by the detenue was misleading, since not supported by the statements of those five different owners of fair price shops.

On verification the opinion of Deputy District Managar, Gr.II of Civil Supply Surendranagar, was obtained and certified on 2nd July, 2005 that the gunny bags of wheat had bearing of the stamps of the corporation and thus, the statement of the detenue that he had purchased the said commodity from other shop

owners was not believable and it was found that wheat was of fair price shop only.

2. Having recorded the above mentioned facts, the detaining authority has found that the commodity, meant for distribution to the persons defined under the scheme of public distribution system from fair price shop and the ultimate beneficiaries is the poor strata of the society was sold by the detenue for personal gain and has indulged into black marketing and profiteering activities. Therefore, according to the detaining authority there was sufficient materials to detain the detenue under the provisions of the Act so that adequate preventive measures can be taken restraining the detenue from indulging into similar detrimental activities prejudicial to the interest of the society and effective maintenance of supply of essential commodities and a subjective satisfaction was arrived that

even remedy under ordinary law was not sufficient and the powers under the Act were invoked with immediate effect.

3. The impugned order of detention dated 08.07.2005 is mainly challenged on the ground that vital documents, relied upon and taken into consideration by the detaining authority for passing the order of detention have not been supplied to the petitioner and to that extent the detenue is being deprived of his right to make an effective representation against the order of detention and his very valuable and constitutional legal right under Article 22(5) of the Constitution of India is violated.

A specific plea is raised by learned Advocate Shri Gondaliya for the petitioner that the representation dated 13th July, 2005 submitted by the detenue to the District Collector, Surendranagar, respondent no.2

herein, where demand was made with regard to the supply of all relevant materials, including the bill books, stock register, account books, seized from the five shop owners and also from the shop of the petitioner detenue. A further demand was raised about supply of the statement of those shop owners and the fair price ration card holders, while cross-checking, whose statements were recorded but not supplied to the detenue. According to Shri Gondaliya, learned advocate for the petitioner these vital materials were very much relied upon and considered by the authority while passing the order of detention and the same are reflected in last but one para of para-2 of the order of detention. He has further submitted that a reply was received from the concerned authority, which has reiterated that as demanded by the detenue the relevant documents have already been submitted. The same fact is stated by the deponent even in the affidavit in

reply.

Shri Gondaliya has further submitted that what was supplied to the detenue was only the statement about the stock of wheat the quantity of wheat illegally disposed of by the fair price shop owners, while cross-checking the record for a period of 3 months from April, 2005 to June, 2005. The said statement is a part of the record at Page 31. However, he has contended that the relevant materials for preparing the statement that might have been helpful to the detenue for making effective representation, is not supplied to the detenue. In absence of the details about the statement prepared by the authority, it was impossible for the detenue to make effective representation so as to defend his case as required under Article 22(5) of the Constitution of India. To this extent, according to the learned advocate for the

petitioner, he was deprived of the remedy and the safeguard guaranteed under Article 22(5) of the Constitution of India. In support of his arguments he has relied upon the decision of this court reported in 2002 (0) GLHEL 207219 in Special Civil Application No.3623 of 2001 dated July 12, 2001 by the learned Single Judge where the order of detention was quashed and set aside on the ground of non-supply of vital documents alongwith the grounds of detention, which form the foundation and basis of passing the order of detention.

Therefore, he submitted that in the present case also non-supply of vital documents as demanded by him vide his representation dated 13.07.2005 by the authority vitiates the order of detention and therefore, requires to be quashed and set aside.

4. Mrs. Hansa B. Punani, learned Assistant

Government Pleader, has opposed the plea raised by the detenue on the ground that as narrated in the order of detention, the activities of the detenue are prejudicial in maintenance of effective flow of supply of essential commodities as the detenue has illegally purchased the wheat from five fair price shop owners, which was earmarked for distribution under Public Distribution Scheme, has submitted after seizure and considering the statement of five fair price shop owners, who have not stated that they sold the wheat to the detenue and in fact on verification, a certificate was given by the officer of Civil Supply Corporation that the wheat beg had bearing the stamp and the ration card holders indicated that the wheat purchased by the detenue was for profiteering and disrupting the supply of essential commodities. According to her, all relevant documents which have been relied upon and considered by the detaining authority were

supplied and, therefore, no legal right, much less any constitutional right of the detenue is violated. Therefore, she has submitted that no interference is called for in such type of cases and the order of detention is to be upheld by this Hon'ble Court in exercise of powers under Article 226 of the Constitution of India.

5. Having heard the rival submissions of the learned advocates for the parties and on perusal of the records of the case including the affidavit in reply filed by the concerned authorities, it is found that by communication dated 13th July, 2005 a specific demand is raised by the detenue to supply the relevant documents for making effective representation against the order of detention and the same is also considered and relied upon by the authority for passing the order of detention. As stated in earlier paras the demand was

raised by the detenue with regard to the bill books, stock register, account books and the statement of fair price ration card holders and statement of five fair price shop owners and the materials relied upon for cross-checking for a period of 3 months i.e. April 2005 to June, 2005 which also formed the part of order of detention and subsequently the concerned authority has also supplied the statements of the fair price shop owners and the gist of disposed of quantity of wheat for a period of 3 months as reflected at Page-31 of the compilation, it mentions about names of the fair price shops owners the total numbers of ration card attached with the shop in different categories and number of statements and cards and percentage. The last column reflects about the quantity of wheat illegally disposed of during the period of 3 months. However, the details of the basis for preparing these statements and as demanded by the detenue are

not supplied even a reference is also made in the order of detention about account books, bill books of the fair price shop owners for a period of 3 months and, therefore, non supply of such materials have vitally affected the right of the detenue to defend his case and to make effective representation before the authority. This Court in the decision relied upon by the learned advocate for the petitioner Shri Gondaliya, after making a reference to the decision of the Apex Court reported in the case of Icchu Devi Choraria Vs. Union of India, 1981 1 SCR 642 has laid down the proposition of law that supply of copies of the vital documents after the order of detention is passed, is fatal to the exercise of powers by the authority in passing the order of detention. It has also referred to the decision in the case of Smt. Shalini Soni Etc. Vs. Union of India reported in AIR 1981, SC 431 and considered the aspect about right of detenue to make

effective representation at the earliest opportunity and ultimately safeguard aforded to the detenue, whose life and liberty is taken away by invoking power in consonance with the provisions of Article 22 of the Constitution of India. So far as the making of representation against the order of detention is concerned, communication of grounds presupposes the formation of the grounds and formation of the grounds required the application of mind by the detaining authority to the facts and materials before it.

6. Therefore, there are two grounds which are upheld for quashing the order of detention i.e. non supply of the vital materials by the detaining authority to the detenue as demanded in the communication dated 13th July, 2005 and also delay of about 10 days from the receipt of the communication dated 13th July, 2005 by the detaining authority.

7. Both the above aspects have vitally affected the legal and constitutional right of the detenue to make effective representation and its expeditious disposal, and, therefore, for the reasons recorded above, the order of detention dated 08.07.2005 passed against the detenue is hereby ordered to be quashed and set aside.

8. The detenue Jitendrakumar Kantilal Gandhi is ordered to be set at liberty forthwith if not required in any other offence by any other authority.

9. Rule is made absolute accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

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